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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 726

THE WACKENHUT CORPORATION, MARVIL INTERNATIONAL SECURITY SERVICES, INC., & ROBERT S. HOPLER,
Appellants,

v.

THE HON. SALVADOR RODRIGUEZ APONTE, Superintendent of Police, THE HON. RAFAEL HERNANDEZ COLON, Secretary of Justice, and THE HON. ROBERTO SANCHEZ VILELLA, Governor of the Commonwealth of Puerto Rico, *Appellees.*

On Appeal from the United States District Court for the District of Puerto Rico

JURISDICTIONAL STATEMENT

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For Marvil International Security Services, Inc.

DONALD M. HALL
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For The Wackenhut Corporation and Robert S. Hopler.

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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On Appeal from the United States District Court for the District of Puerto Rico

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JURISDICTIONAL STATEMENT

OPINION BELOW

Appellants seek review of the as yet unreported Opinion and Order of the United States District Court for the District of Puerto Rico, filed June 23, 1966, set forth in the Appendix hereof, *infra*, pp. 11a-18a.

JURISDICTION

Appellants instituted this action in the District Court for the District of Puerto Rico under 28 U.S.C. §§ 2281, 2283 and 2284, seeking to have declared unconstitutional portions of Act No. 108 of June 29, 1965 of the Commonwealth of Puerto Rico and the issuance of an interlocutory and permanent injunction against the enforcement of that Act.

After trial, the three-judge court convened pursuant to 28 U.S.C. § 2284 filed the Opinion and Order appealed, staying proceedings in the action pending the commencement by appellants of a suit in the courts of the Commonwealth of Puerto Rico appropriate to raise the issue involved in this action and its prosecution to final determination by the Supreme Court of Puerto Rico, thus abstaining from deciding on the merits the matters before it. A notice of appeal to this Court was filed on July 20, 1966.

Both for themselves, as "agencies" under the law (Appendix, *infra*, pp. 1a-2a § 2), and their watchmen employees,[1] present and future, Appellants sought protection of their right to "hold specific employment and to follow a chosen profession free from unreasonable governmental interference." *Greene* v. *McElroy*, 360 U.S. 474, 479, (1959); *Pierce* v. *Society of Sisters*, 268

[1] Plaintiffs have standing to assert the latter. *Bantam Books, Inc.* v. *Sullivan*, 372 U.S. 58, 64 (1963); *CBS* v. *U.S.* 316 U.S. 407, 422-23 (1942); *Liggett Co.* v. *Baldridge*, 278 U.S. 105, 110, (1928); *Pierce* v. *Society of Sisters*, 268 U.S. 510 (1925); *Terrace* v. *Thompson*, 263 U.S. 197 (1923); *Truax* v. *Corrigan*, 257 U.S. 312 (1921); *Truax* v. *Raich*, 239 U.S. 33 (1915); *See NAACP* v. *Alabama*, 377 U.S. 449, 458 (1964); *See Brotherhood of R. Trainmen* v. *Virginia*, 377 U.S. 1 (1964); *NAACP* v. *Button*, 371 U.S. 415, 428 (1963); *City of Chicago* v. *Atchison, T. & S. F. Ry Co.*, 357 U.S. 77, 83 (1958).

U.S. 510 (1925); *Lehon* v. *City of Atlanta*, 242 U.S. 43 (1916); *Smith* v. *Texas*, 233 U.S. 630 (1914); *Norwood* v. *Ward*, 46 F.2d 312 (S.D.N.Y. 1930) *aff'd.* 283 U.S. 800 (1931). Appellant Marvil International Security Services, Inc., also sought protection of its right to employ trained dogs in conjunction with guards against the absolute prohibition of that service contained in Article 19 of Law 108 (Appendix, p. 3a, *infra*). That these rights are substantial is implicit in the opinion of the District Court and in the very convocation of the three-judge tribunal and explicit in the cases just cited.

The jurisdiction of this Court to review the decision of the District Court on direct appeal is conferred by 28 U.S.C. § 1253. The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on appeal in this case. *Government and Civic Employees, etc.* v. *Windsor*, 347 U.S. 901 (1954), affirming 116 F. Supp. 354 (N.D. Ala., 1953); cf. *England* v. *Louisiana State Bd. of Med. Exam.*, 375 U.S. 411, 413 (f.n.) (1964); *Turner* v. *City of Memphis*, 369 U.S. 350 (1962).

STATUTORY AND RULES PROVISIONS INVOLVED

The statute of the Commonwealth of Puerto Rico the constitutionality of which is involved is Act. No. 108 of June 29, 1965, 24 Laws of Puerto Rico Annotated ("L.P.R.A.") §§ 285-286d. The portions involved in this case are set forth in the Appendix, *infra*, pp. 1a-5a.

The pertinent regulations issued pursuant to the aforementioned statute are found at 27 Rules & Regulations of Puerto Rico ("R.R.P.R.") §§ 285o-1 to 285o-142, set forth in the Appendix, *infra*, pp. 5a-10a.

QUESTIONS PRESENTED

The District Court abstained from deciding plaintiffs' suit on the merits. Therefore, it entered an order staying all further proceedings in this case "pending the commencement by plaintiffs of litigation in the courts of the Commonwealth of Puerto Rico appropriate to raise the issues involved in this case and its prosecution to final determination by the Supreme Court of Puerto Rico." (Appendix, *infra*, p. 18a.)

The questions presented are:

A. Whether the District Court erred in abstaining *sua sponte* from the exercise of jurisdiction to decide if an interlocutory or permanent injunction should issue enjoining the defendants from enforcing the statute challenged herein on the grounds of its unconstitutionality in the following circumstances:

(i) Where on two separate occasions defendants expressly waived abstention by the District Court pending determination of the issues in the courts of the Commonwealth of Puerto Rico, and stipulated to trial and decision of the case by the federal court.

(ii) Where, after full trial on the merits pursuant to that stipulation, followed by the defendants second rejection of a stay, the doctrine of abstention was invoked by the District Court without affording appellants an opportunity to be heard with respect to the propriety of the court's invocation of the doctrine.

(iii) Where the court, after full hearing on the merits and of all the evidence, failed to make findings of fact.

(iv) Where all or part of the challenged portions of the statute are so clear on their face as not to require

construction or interpretation by the Commonwealth courts.

B. Whether the doctrine of abstention may be invoked after the trial stage of an action has been reached.

STATEMENT OF THE CASE

Appellants, The Wackenhut Corporation (Wackenhut) and Marvil International Security Services, Inc. (Marvil), are engaged in providing private enterprises and government agencies with guards and watchmen, as well as rendering investigative services. Appellant Marvil also offers teams of guards and trained German Shepherds. Appellant Hopler is Wackenhut's District Manager in Puerto Rico. The appellees are the Superintendent of Police, the Attorney General and the Governor of Puerto Rico, respectively. The Superintendent of Police is charged with enforcement of the law attacked below.

On September 10, 1965, appellants filed their application for Interlocutory and Permanent Injunction seeking to enjoin the governmental authorities from enforcing against them Act 108 of 1965 of the Commonwealth of Puerto Rico, on the grounds that it was unconstitutional under the 5th and 14th Amendments to the Constitution of the United States. Said Act, *inter alia*, prohibits security agencies from performing normal watchman and guarding services during labor disputes, prohibits watchmen employed by security agencies from performing any guard services unless qualified as detectives and prohibits security agencies from using trained dogs. The provisions of the Act are made generally inapplicable to guards and watchmen other than those employed by security agencies.

On September 10, 1965, the District Court (Mathes, J,) convoked a three-judge district court pursuant to the provisions of 28 U.S.C. Section 2284. On September 17, 1966, Judge Mathes issued a temporary restraining order prohibiting the enforcement of Act 108 against appellants Wackenhut and Hopler. On October 19, 1965, appellees filed a motion seeking, *inter alia*, a stay of proceedings and to have the constitutional controversy first resolved by the courts of the Commonwealth of Puerto Rico. On November 19, 1965, appellees filed a motion withdrawing the motion of October 19, and on December 1, 1965, joined in a stipulation agreeing to proceed to trial before the federal court (Appendix, *infra*, p. 19a.)

The case proceeded to trial on February 8 and 11, 1966, before the statutory court of three judges and was continued until April 27, 1966, in order to ascertain the effects of the regulations (Appendix, *infra*, pp. 5a-10a), then being promulgated by the Superintendent of Police. At the April 27 hearing, the court offered appellees the opportunity of proceeding in the Commonwealth courts for constitutional and statutory interpretation of the law challenged. Once again appellees elected to remain in federal court.

On June 23, 1966, the District Court abstained from deciding the constitutionality of Act 108 of 1965, retained jurisdiction, and required appellants to raise the issues before the appropriate courts of the Commonwealth of Puerto Rico within a reasonable time under pain of dismissal.

THE QUESTIONS ARE SUBSTANTIAL

The decision of the District Court raises substantial questions respecting the propriety of invoking the so-called doctrine of abstention, and the balancing of the rights of federal litigants against the counterweights of federal-state comity. *Hostetter* v. *Idlewild Bon Voyage Liquor Corp.*, 377 U.S. 324, 328-29 (1964); *City of Chicago* v. *Atchison, T. & S. F. Ry. Co.*, 357 U.S. 77, 83 (1958).

The abstention doctrine is a judicially imposed self-restraint, founded upon equitable principles, and confined to a relatively small class of cases. *Hostetter, supra; Baggett* v. *Bullitt*, 377 U.S. 360, 375 (1964); *Meredith* v. *City of Winter Haven*, 320 U.S. 228 (1943). It should not be invoked automatically, but only in the exercise of a sound discretion since the federal courts cannot evade the grant of judicial power conferred by Article 3, §§ 1 and 2 of the Constitution. *N.A.A.C.P.* v. *Bennett*, 360 U.S. 471 (1959); *Meredith* v. *City of Winter Haven, supra; cf. Fifth Amendment.* Abstention should not be invoked where the statute is clear and unambiguous, *Harman* v. *Forsenius*, 380 U.S. 528 (1965), *Davis* v. *Mann*, 377 U.S. 678, 690 (1964), or, being vague in other respects, is unambiguous in application to complainant, and especially where neither party requested abstention below. *Baggett* v. *Bullitt*, 377 U.S. at 375-380; *Hostetter* v. *Idlewild Bon Voyage Liquor Corp.*, 377 U.S. at 328-29. That the appellants are "agencies" within the meaning of the law is clear. (Appendix, *infra*, pp. 1a-2a, § 2).

While recognizing that this Court is loath to upset a denial of an injunction, and presumably an abstention, absent a clear showing of abuse of discretion, we suggest that the abstention in the instant case is such

an abuse, approximating of itself a denial of due process, namely, expeditious exercise of the judicial power granted and imposed upon this Court and "such inferior courts as Congress may from time to time ordain and establish". Article 3, § 1, U.S. Constitution. In this connection, the appellants invite this Court's attention, in particular, to the following circumstances:

(1) The constitutional rights which appellants are seeking to protect are rights which the Court has repeatedly held to be fundamental, as shown above pp. 2-3.

(2) The provisions of the statute enforcement of which is sought to be enjoined are virtually the same as the provisions of the statute of the State of New York, the constitutionality of which was mooted by the construction given in *Norwood* v. *Ward, supra,* p. 3, and similar in operative effect to the statutes of Illinois and Texas held by this court to be unconstitutional in *Morey* v. *Doud,* 354 U.S. 457 (1957) and *Smith* v. *Texas, supra,* p. 3, respectively.

(3) The factual situation is closely parallel to, but even stronger than the circumstances held to be proper cases for non-abstention in *City of Chicago* v. *Atchison, T. & S. F. Ry. Co.,* 357 U.S. at 84, and the *Hostetter* case U.S. at 328-329.

(4) The showing made in the court below establishes the application of the statute questioned to appellants, its enforcement, and the likelihood of substantial injury to appellants for which there is no plain, adequate and complete remedy at law. *Toomer* v. *Witsell,* 334 U.S. 385 (1948).

(5) The appellees' withdrawal of their motion for abstention and their stipulation to go to trial before the

District Court certainly satisfied the dictates of comity. The court's invocation the abstention doctrine after the trial, not even giving the parties the benefit of findings of fact and the consequent effect of *res judicata*, and remitting them to another trial, with the attendant prospects of exhaustion of appeals in the judicial hierarchies of both Puerto Rico and the United States, manifests a clear and unmistakable abuse of discretion which this Court should promptly correct.

We think it equally plain that this case presents a question of substantial importance affecting the administration of justice in federal courts in their time-honored role as arbiters of the constitutional rights of litigants.

CONCLUSION

For the reasons stated, the question presented by this appeal are substantial and of public importance. It is respectfully submitted that probable jurisdiction should be noted.

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For Marvil International Security Services, Inc.

DONALD M. HALL
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For The Wackenhut Corporation and Robert S. Hopler.

APPENDIX

(No. 108)

(Approved June 29, 1965)

AN ACT

To regulate the private detective profession, the private detective agencies, the safety agencies for the protection of private enterprises, and the schools for the training of private detectives, and to fix penalties for violations of this act.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.—Short Title.—This act may be cited as the "Private Detectives Act of Puerto Rico".

Section 2.—Definitions.—For the purposes of this act:

"Private Detective", is a person who for private purposes, or in behalf of private persons exclusively, hires his services to (a) conduct investigations or inquiries with the purpose of obtaining information on public offenses, damages caused or attempted; the habits, credibility, conduct, movements, whereabouts, associations, transactions, reputation or character of any person; the location of stolen or lost property with the object of recovering same through the corresponding legal procedures; the causes and origin of and responsibility for fires or accidents or damages to real or personal property; the occurrence of any event; the truth or falsehood of any statement or representation; (b) procure or obtain evidence to be used before investigative or arbitration committees or boards or before the courts in civil or criminal actions; (c) protect persons or real or personal property; or for preventing thefts or the misapplication or illegal appropriation of money, bonds, stock, or any kind of securities or documents.

"Agency", includes "Private Detectives Agency" and "Safety Agency for the Protection of Private Enterprises".

"Private Detectives Agency" shall mean and include any person engaged in the private detective business and employing one or more persons for such purposes.

"Safety Agency for the Protection of Private Enterprises" shall mean and include any person especially engaged in the rendering of custodial services or in the protection of private property in industrial, commercial and mercantile establishments, or in those related with agricultural enterprises and employing one or more persons for such purposes.

"School" shall mean any person or entity engaged in the teaching and training of private detectives.

"Superintendent" shall mean the Superintendent of the Police of Puerto Rico.

"Person" shall mean any natural or artificial person.

Section 3.—License required:—On and after the effectiveness of this act it shall be illegal to engage in the private detective business without first having obtained a license to that effect, issued by the Superintendent in accordance with the terms of this act.

Section 4.—License requirements for private detectives:—To obtain a license as private detective the following qualifications shall be required:

* * * *

(k) To have successfully passed a course of study in a private detectives school authorized by the Police Superintendent, with a minimum of 1,000 hours of study, and competent professional practice as determined by the Superintendent through regulation.

* * * *

Section 7.—Bonds.—For the obtaining of a license as private detective or for the operation of an "Agency" it shall be a prerequisite to give a bond in favor of the Commonwealth of Puerto Rico for the sum of five thousand

(5,000) dollars, which shall always be kept for said sum, to answer for any damages caused a third person through culpable or negligent action or omission. The bond may be through deposit in cash, mortgage, or by a surety or fidelity company or corporation authorized to do business in Puerto Rico.

* * * *

Section 16.—Regulating Power.—The Superintendent shall, with the approval of the Governor, promulgate such rules and regulations as he may deem convenient to make more feasible the implementation of this act, subject, insofar as applicable, to the provisions of Act No. 112 of June 30, 1957.

Section 17.—Causes for revocation or refusal to renew Licenses:—Any of the following causes shall be ground for revoking or refusing to renew a license:

* * * *

Section 19.—The private detectives and agencies covered by this act shall not use trained dogs in the rendering of the services defined in section 2.

Section 20.—The private detectives and agencies covered by this act shall not render the services defined in section 2 in cases involving conflicts among laborers or labor-management disputes, or where a petition for election has been filed. Neither shall they render said services to an employer with whom a labor union has negotiated a collective agreement for the rendering of equal services, or when, upon expiration of a collective agreement, the parties are negotiating a new agreement.

The testimony of private detectives shall not be admitted in court on matters about which they have obtained information as a result of services rendered in violation of the prohibition established in this section; neither the oral testimony of any person who has learned of the facts on which he is testifying while acting as agent, attorney or

collaborator or by instructions of private detectives; nor any documentary or objective evidence likewise obtained.

* * * *

Section 27.—Exemptions:—Any person who has been practicing for at least one year prior to the approval of this act the profession of private detective in Puerto Rico, and all persons who have belonged to the Detective Corps of the Commonwealth of Puerto Rico or of any State of the Union, or to any Investigation Corps attached to the Police, or to the Federal Bureau of Investigations (FBI), and have been honorably discharged therefrom, shall be entitled to a private detective license upon application therefor within ninety (90) days after the effective date of this act. The application shall be sworn to before an officer authorized to administer oaths in Puerto Rico and shall state the applicant's name and surnames, date and place of birth, place of residence, time he has lived in Puerto Rico, time during which and places where he has practiced the occupation of private detective; however, all such persons shall comply with the requirements of section 4, with the exception of the provisions of subsections (j) and (k).

* * * *

Section 30.—Penalties.—Any person who violates any of the provisions of this act; or who engages in the occupation of private detective or operates an "Agency" without being authorized therefor by a license issued in accordance with this act; or who falsely holds out himself to be a private detective or an employee of an "Agency"; or who discloses information in violation of the provision of section 18 of this act; and any person who hires the services of a private detective or "Agency" knowing that such detective or "Agency" does not hold a license issued in accordance with this act, shall be guilty of a misdemeanor and shall upon conviction be punished by a fine of not less than one hundred (100) dollars, or by imprisonment for

not more than six (6) months, or both penalties, fine and imprisonment, in the discretion of the court.

Section 31.—Saving Clause.— • • • •

Neither shall the provisions of this act be applicable to public insurance adjusters, nor to watchmen, night watchmen and guards who in their individual capacity are engaged in such trades or occupations in private enterprises or in public, industrial, commercial or agricultural establishments.

Section 32.—Any regulations that the Secretary may prescribe shall be adopted after proper public hearings by said officer in which all parties concerned shall be heard.

Such regulations shall take effect once they are filed in the Department of State in accordance with Act No. 112 of June 30, 1957, and the Governor has, through proclamation, set the date of effectiveness.

Section 33.—Effectiveness:—This act shall take effect July 1, 1965.

COMMONWEALTH OF PUERTO RICO
POLICE OF PUERTO RICO

REGULATION OF PRIVATE DETECTIVES, PRIVATE DETECTIVE AGENCIES, SAFETY AGENCIES AND PRIVATE DETECTIVE SCHOOLS

I

GENERAL PROVISIONS

• • • • •

Section 3

None of the provisions of this Regulation shall be applicable to Private Detectives nor to Private Detective Agencies nor to Safety Agencies when they are rendering services for public purposes and for the benefit of the

United States of America, the Commonwealth of Puerto Rico or any of the Municipal Governments of Puerto Rico, or of any political subdivision or public corporation of these Governments. None of the provisions of this Regulation shall be applicable to detectives or agents of the Puerto Rico Police, appointed in accordance with law, nor to any person employed by the Police of Puerto Rico while in the discharge of his official duties; nor to any magistrate or attorney in the practice of his profession; nor to any person whose business is to furnish information as to the business, financial condition and credit of natural or artificial persons; nor to any person who investigates by himself any matter in which said person is an interested party; neither the provisions be [sic] applicable to public insurance adjusters, nor to watchmen or night watchmen who, in their individual capacity, are engaged in such trades or occupations in private enterprises or in public, industrial, commercial or agricultural establishments.

* * * *

III

THE PRIVATE DETECTIVES

Section 12

According to the provisions of section 2 of Act No. 108, the Private Detectives are classified in three different categories:

(a) The Private Detective who performs investigations or inquiries with the purpose of obtaining information about the various matters indicated in section 2(a) of Act No. 108.

(b) The Private Detective who seeks or obtains evidence to be used in judicial or quasi-judicial proceedings, referred to in section 2(b) of Act. No. 108.

(c) The Private Detective who protects persons or properties with the purpose of preventing the com-

mission of the crimes mentioned in section 2(c) of Act No. 108.

• • • •

Section 14

In addition to evidencing compliance with the requirements and conditions stated in the preceding section, the Private Detectives, in order to obtain a license as such, shall:

(i) Have completed successfully a course of study in a Private Detective School, authorized by the Superintendent of Police. The course of study shall contain a minimum of 1,000 hours of study and competent professional practice, in accordance with the following determinations:

(a) In the case of the Private Detectives mentioned in section 12(a) of this Regulation, 500 hours of study and 500 hours of competent professional practice will be required.

(b) In the case of the Private Detectives mentioned in section 12(b) of this Regulation, 500 hours of study and 500 hours of competent professional practice will be required.

(c) In the case of the Private Detectives mentioned in section 12(c) of this Regulation, 100 hours of study and 900 hours of competent professional practice will be required.

(ii) Have passed a written examination prepared by the Superintendent with the purpose of measuring the understanding of the applicant as to those matters reasonably related with the functions that he will have to fulfill. The functions to be fulfilled being different for the various classes of Private Detectives, the Superintendent shall bear in mind these circum-

stances when preparing the examinations for each one of the classes of Private Detectives.

(iii) Have kept good behavior and reputation in the past, as evidenced by the investigations that, for said purpose, the Superintendent will conduct, according to the provisions of subsection 4 of section 15 of Act No. 108. To facilitate these investigations, every applicant, upon filing his petition, will authorize the Superintendent of Police to carry out, on behalf of petitioner, efforts, with the purpose of obtaining from any private institution, official agency of the Government of Puerto Rico and the Federal Government, including the Armed Forces, pertinent information about applicant, comprising work, medical and scholastic history and any other information that is contained in the files of said agencies and institutions with reference to applicant. The information so obtained shall be used by the Superintendent solely for official purposes.

Section 15

No person who is or has been a Private Detective, or an employee of a Private Detective, shall divulge, privately or publicly, any information obtained by him in the course of his employment, except upon the prior written consent of the person that contracted his services, excepting such information which refers to the commission of crimes and those instances in which it is legally required to submit said information. Every Private Detective, in his capacity as employer, shall strictly comply with the obligation imposed upon him by the second paragraph of section 18 of Act No. 108.

* * * *

IV

THE AGENCIES

Section 17

Under the provisions of Act No. 108 and of this Regulation two classes of Agencies are established:

(i) The Agency of Private Detectives, referring to any person, natural or corporate, engaged in practicing the profession of Private Detective and that, for said purpose, employs one or more persons.

(ii) The Safety Agency for the protection of private enterprises, which refers to any person, natural or corporate, specially engaged in furnishing custodial services or to protecting private property in industrial, commercial or business establishment, or in those establishments connected with the development of agricultural enterprises, that, for said purposes, employs one or more persons.

• • • •

VI

DEFINITIONS

Section 24

For the purposes of Act No. 108 and of this regulation "trained dogs" are those dogs that have received training in obedience, nose work and criminal work, and to perform these duties accompanied by or in coordination with their respective handlers.

Section 25

For the purposes of Act No. 108 and this Regulation, the terms "conflicts among laborers", "labor-management disputes" and "where a petition for election has been filed", will have the following meanings respectively:

(a) "Conflicts among laborers" will refer to those labor conflicts that develop between groups of workers, provided said conflicts are affecting, substantially, the normal operation of some enterprise or the public interest.

(b) "Labor-management disputes" will refer to strikes and threats of strikes, meaning by threats of strikes, those instances in which a labor organization officially notifies the employer that in [sic] a fixed date it will go on strike, or instances in which there are clear signs that there has been a break in the collective bargaining and there exists a strike threat clearly evidenced by concrete acts directed or oriented to give rise to a strike movement.

(c) "Where a petition for election has been filed" shall mean cases where a petition for election has been filed because of the existence of a "conflict among laborers" or a "labor-management dispute", as these terms are respectively defined in the subsections a and b of this section.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

Civil No. 395-65.

THE WACKENHUT CORPORATION, MARVIL INTERNATIONAL SECURITY SERVICES, INC., and ROBERT S. HOPLER, *Plaintiffs*

v.

THE HON. SALVADOR RODRIGUEZ APONTE, Superintendent of Police, THE HON. RAFAEL HERNANDEZ COLON, Secretary of Justice and THE HON. ROBERTO SANCHEZ VILELLA, Governor of the Commonwealth of Puerto Rico.

Before MARIS and MCENTEE, Circuit Judges, and RUIZ-NAZARIO, District Judge.

Opinion of the Court

(Filed June 23, 1966)

By MARIS, Circuit Judge.

The plaintiffs in this case seek an injunction restraining the enforcement against them of the Private Detectives Act of Puerto Rico approved June 29, 1965, No. 108. Upon their application a district judge then temporarily presiding by assignment in this court issued a temporary restraining order on September 16, 1965. Upon the application of the plaintiffs the Chief Judge of the First Circuit on January 13, 1966 constituted the present district court of three judges to hear and determine the plaintiffs' application for an interlocutory and permanent injunction. Hearings were held on February 8, February 11 and April 27, 1966.

The Wackenhut Corporation, one of the plaintiffs, is a Florida corporation authorized to do business in Puerto Rico. Marvil International Security Services, Inc., another of the plaintiffs, is a corporation of Puerto Rico, and Robert S. Hopler, the third plaintiff, is a resident

of Puerto Rico and district manager in Puerto Rico of The Wackenhut Corporation. Both Wackenhut and Marvil are engaged in the business as independent contractors of providing guards and watchmen services for industrial concerns. They allege that the Private Detectives Act of Puerto Rico deprives them of liberty, property and livelihood without due process of law in violation of the Constitution of the United States in that

> "(a) It unreasonably, arbitrarily and capriciously prohibits them from rendering the same services which it is permissible for persons in their individual capacity to render.
>
> "(b) It unreasonably, arbitrarily and capriciously includes guards and watchmen employed by agencies providing guard and watchman services to the general public in the definition of 'private detectives'.
>
> "(c) It unreasonably, arbitrarily and capriciously prohibits said plaintiffs from rendering guard and watchman services during the course of conflicts among workers, or between workers and employers, or in cases in which petitions for union elections have been filed, whereas said plaintiffs would not be so prohibited were they rendering said services in their individual capacity.
>
> "(d) It unreasonably, arbitrarily and capriciously prohibits plaintiff Marvil from using trained dogs in rendering guard and watchman services, whereas an individual rendering said services with trained dogs would not be so prohibited."

Section 3 of the Private Detectives Act which became effective July 1, 1965, makes it illegal to engage in the private detective business without first having obtained a license from the Superintendent of Police. Section 2 defines "Private Detective" as

"... a person who for private purposes, or in behalf of private persons exclusively, hires his services to (a) conduct investigations or inquiries with the purpose of obtaining information on public offenses, damages caused or attempted; the habits, credibility, conduct, movements, whereabouts, associations, transactions, reputation or character of any person; the location of stolen or lost property with the object of recovering same through the corresponding legal procedures; the causes and origin of and responsibility for fires or accidents or damages to real or personal property; the occurence of any event; the truth or falsehood of any statement or representation; (b) procure or obtain evidence to be used before investigative or arbitration committees or boards, or before the courts in civil or criminal actions; (c) protect persons or real or personal property; or for preventing thefts or the misapplication or illegal appropriation of money, bonds, stock, or any kind of securities or documents."

One of the requirements imposed by section 4 for obtaining a license as a private detective is

"(k) To have successfully passed a course of study in a private detectives school authorized by the Police Superintendent, with a minimum of 1,000 hours of study, and competent professional practice as determined by the Superintendent through regulation."

Section 7 requires all licensed private detectives and agencies to furnish a bond in the sum of $5,000.00.

The act also regulates and requires the licensing of private detectives agencies and of safety agencies for the protection of private enterprises. By section 2 "Private Detectives Agency" is defined to mean and include

"any person engaged in the private detective business and employing one or more persons for such purposes."

"Safety Agency for the Protection of Private Enterprises" is defined to mean and include

> "any person especially engaged in the rendering of custodial services or in the protection of private property in industrial, commercial and mercantile establishments, or in those related with agricultural enterprises and employing one or more persons for such purposes."

Section 19 of the Act prohibits private detectives and agencies covered by the Act from using trained dogs in the rendering of the private detective services defined in section 2 of the Act.

Section 20 prohibits private detectives and agencies covered by the Act from rendering services in cases "involving conflicts among laborers or labor-management disputes, or where a petition for election has been filed."

Section 31 states that the provisions of the Act shall not be applicable "to watchmen, night watchmen and guards who in their individual capacity are engaged in such trades or occupations in private enterprises or in public, industrial, commercial or agricultural establishments."

Finally section 16 of the Act authorizes the Superintendent of Police with the approval of the Governor to "promulgate such rules and regulations as he may deem convenient to make more feasible the implementation" of the Act.

The contentions of the plaintiffs may be summarized as follows:

They assert first, that it is arbitrary and unconstitutional for the Act to join in a single category for purposes of regulation under the designation "private detectives" those who merely serve to protect persons or propery as watchmen or guards with those who conduct investigations

and procure evidence who are commonly known as detectives and whom we have called sleuths.

Secondly, they assert that it is arbitrary and unconstitutional to impose the same requirement of 1,000 hours of preliminary scholastic study upon both groups.

They urge in the third place that it is arbitrary and unconstitutional to prohibit the use of trained dogs by those guards who are required to have licenses as private detectives when the Act does not prohibit the use of trained dogs by public officials or by watchmen and guards employed by private enterprises.

Finally, they urge that it is arbitrary and unconstitutional to prohibit licensed private detectives and agencies from rendering services in situations involving labor disputes or where a petition for an election has been filed, when the Act does not prohibit the employment of unlicensed individuals as watchmen or guards by enterprises involved in such labor controversies.

Pursuant to the authority granted to him by section 16 of the Act the Superintendent of Police on April 21, 1966, with the approval of the Governor, promulgated regulations under the Act.

Section 12 of the regulations classified private detectives into three different categories, (a) those who conduct investigations or inquiries, and (b) those who procure evidence, whom we have called sleuths, and (c) those who protect persons or property, whom we have called guards. By section 14 of the regulations an applicant for a license as a private detective of class (a) or class (b), a sleuth, must have successfully completed 500 hours of study in a private detective schools and 500 hours of practice, while an applicant for a license in class (c) as a guard, is required to have completed only 100 hours of such scholastic study but must have had 900 hours of practice. Thus to the extent of authorizing different licenses and differing qualifica-

tions of education and experience the regulations have distinguished between those licensees whom we have described as sleuths and those whom we have called guards and have imposed much lesser educational requirements upon the latter group.

It thus appears that the plaintiffs' second objection and perhaps their first have been met at least partially by the regulations which the Superintendent of Police and the Governor have promulgated under the Act. It is obvious, however, that difficult questions of constitutional due process remain and that these arise under the due process clause contained in section 7 of Article II of the Constitution of Puerto Rico, as well as under the Federal Constitution. It is equally obvious to us that the resolution of these questions depends in substantial part upon the scope of the Private Detectives Act as it is interpreted by the ultimate authority, the Supreme Court of Puerto Rico. For example, in the light of the exemption by section 31 of watchmen and guards who in their individual capacity are engaged in such trades or occupations in private enterprises or in public, industrial, commercial or agricultural establishments, what scope is to be given to the private detective business which under section 2 specifically includes the business of one who hires his services as a watchman or guard, and in which section 3 makes it illegal for an unlicensed individual to engage? It is clear that if section 31 is to be read very broadly as exempting all individual watchmen and guards engaged in these occupations in public or private industrial, commercial or agricultural establishments the scope of section 3 may be so narrowed with respect to watchmen and guards as to minimize or even eliminate the constitutional questions which the plaintiffs raise. In this connection the definitions of "Private Detective Agency" and "Safety Agency for the Protection of Private Enterprises" set out in section 2 may well be pertinent. For if these definitions are to be read as de-

scribing separate non-overlapping businesses, the "private detective business" referred to in the definition of "Private Detective Agency" would appear not to include the business of rendering watchman and guard service, which is the subject matter of the definition of "Safety Agency". If this is true consistency might require the definition of "Private Detective" appearing in section 2 to be read in the conjunctive as requiring all private detectives subject to the Act to possess the qualifications to perform the first two types of service described in the definition, i. e. investigator and procurer of evidence, as well as the third type, watchman or guard. Under that construction of the Act those individuals qualified only as watchmen or guards would not be "private detectives" within the statutory definition and would consequently not be required to be licensed under the Act, a construction of the Act which it could be argued is supported by the language of section 31 exempting individuals engaged in the occupation of watchman or guard. Thus it appears that until the Supreme Court of Puerto Rico has given authoritative definition to the scope and applicability of the Private Detectives Act consideration of the constitutional issues raised in this case would be premature and perhaps unnecessary.

In such a situation as this the Supreme Court has held that it is appropriate for the district court to abstain from further proceedings until the state courts have been given the opportunity to consider and determine the questions of statutory construction and constitutional validity which are involved. Railroad Com. v. Pullman Co., 1941, 312 U.S. 496; Harrison v. NAACP, 1959, 360 U.S. 167; Martin v. Creasy, 1959, 360 U.S. 219; United Gas Pipe Line Co. v. Ideal Cement Co., 1962, 369 U.S. 134. As to the plaintiffs' right to reserve federal constitutional questions see England v. Louisiana State Board of Medical Examiners, 1964, 375 U.S. 411.

We think that the application of the doctrine of abstention is particularly appropriate in a case such as the present one which involves the construction and validity of a statute of the Commonwealth of Puerto Rico. For a due regard for the status of that Commonwealth under its compact with the Congress of the United States dictates, we believe, that it should have the primary opportunity through its courts to determine the intended scope of its own legislation and to pass upon the validity of that legislation under its own constitution as well as under the Constitution of the United States.

An order will accordingly be entered staying all further proceedings in this case pending the commencement by the plaintiffs of litigation in the courts of the Commonwealth of Puerto Rico appropriate to raise the issues involved in this case and its prosecution to final determination by the Supreme Court of Puerto Rico. If it should appear that such a suit has not been instituted by the plaintiffs within a reasonable time after the entry of our order or that it is not being prosecuted diligently to final determination the defendants may apply for an order dissolving the existing restraining order and dismissing the present suit in this court.

Order Staying Proceedings

It is ordered that all further proceedings in the above entitled action be stayed pending the commencement by the plaintiffs of a suit in the courts of the Commonwealth of Puerto Rico appropriate to raise the issues involved in this action and its prosecution to final determination by the Supreme Court of Puerto Rico. If it should appear that such a suit has not been instituted by the plaintiffs within a reasonable time after the entry of this order or that it is not being prosecuted diligently to final determination the defendants may apply to this court for an order

dissolving the existing restraining order and dismissing the above entitled action in this court.

By the Court:

ALBERT B. MARIS
Circuit Judge

Request for the Acceptance of Stipulation

TO THE HONORABLE COURT:

Now come the Plaintiffs The Wackenhut Corporation, Marvil International Security Services, Inc., Robert S. Hopler and Defendants The Honorable Salvador T. Roig, Superintendent of Police, The Honorable Rafael Hernández Colón, Secretary of Justice, The Honorable Roberto Sánchez Vilella, Governor, Commonwealth of Puerto Rico who by their undersigned attorneys stipulate and request acceptance of this stipulation by the Honorable Court:

1. That Defendants on the 29th day of November, 1965, filed a Motion to Desist from their Motion filed on October 19, 1965. Defendants agree to file an answer to the application for Interlocutory and Permanent Injunction on or before the 1st of December, 1965.

2. Plaintiffs and Defendants by their attorneys agree to proceed as suggested by the Chief Judge to hear the case on the 6th day of February, 1966 or as soon as possible thereafter.

3. Plaintiffs by their attorneys agree to file a brief in support of the constitutional questions therein involved on or before the 17th day of January, 1966.

4. The defendants by their attorney, in turn agree, to file their reply brief on or before the 1st day of February, 1966.

5. Plaintiffs and defendants by their attorneys agree to be ready with whatever witnesses or evidence is necessary

for the date set for the hearing of the case before the Statutory Three-Judge Court.

6. Plaintiffs' and defendants' attorneys agree to reserve the right to file stipulation of facts on or before the date set for the hearing of the case.

WHEREFORE plaintiffs and defendants respectfully pray: That this stipulation be accepted by the Court.

SAN JUAN, Puerto Rico, this 1 day of December, 1965.

McCONNELL, VALDÉS & KELLY
Attorneys for Plaintiffs
The Wackenhut Corporation
and Robert S. Hopler

By: /s/ DONALD M. HALL
Donald Hall

PARKE, GRAVES & RODRÍGUEZ MADURO
Attorneys for Plaintiff Marvil
International Securities
Services Inc.

By: /s/ WILLIAM B. GRAVES
William B. Graves

The Hon. Salvador T. Roig,
Superintendent of Police;
The Hon. Rafael Hernández
Colón, Secretary of Justice,
The Hon. Roberto Sánchez
Vilella, Governor, Commonwealth of Puerto Rico.

By: /s/ MIRIAM NAVEIRA MERLY
Mimiam Naveira Merly
Attorney for the Commonwealth of Puerto Rico

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In the
Supreme Court of the United States

OCTOBER TERM, 1966

No. 726.

THE WACKENHUT CORPORATION, ET AL.,
APPELLANTS,

v.

THE HON. SALVADOR RODRIGUEZ APONTE,
ET AL.,
APPELLEES.

MOTION TO AFFIRM

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APPELLEES.

MOTION TO AFFIRM

Appellees, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, move that the Opinion and Order of the District Court be affirmed on the ground that the questions are so unsubstantial as not to warrant further argument.

Statement

This is a direct appeal from the Order filed on June 23, 1966 by a district court of three judges convened pursuant to 28 U.S.C. §2284 staying proceedings in the action pending commencement by appellants of a suit in the courts of the Commonwealth of Puerto Rico.

On September 10, 1965 appellants filed an application for Interlocutory and Permanent Injunction seeking to enjoin the governmental authorities from enforcing Act 108 of 1965. On September 16, 1965 a Temporary Restraining Order was filed by the Hon. William C. Mathes, senior district judge. The three judges district court was convened and hearings were held and the case was therefore submitted. On June 23, 1966 the Order appealed from was entered. The appellants filed their Notice of Appeal and have docketed the case and filed their jurisdictional statement.

Argument

Act No. 108 of 1965 has not been interpreted by the local courts of Puerto Rico. As pointed out by the District Court, the case contains local issues, the determination of which might render unnecessary the resolution of the federal issues. This can be done through an authoritative construction by the commonwealth courts. In such a case, abstention lies. *Railroad Commission* v. *Pullman Co.*, 312 U.S. 496; *Spector Motor Service* v. *McLaughlin*, 323 U.S. 101; *Harrison* v. *N.A.A.C.P.*, 360 U.S. 167.

In the instant case the lower court did not abuse its discretion. The procedure adopted by it avoids the possibility of conflict between the federal and local jurisdiction, the unnecessary impairment of state functions, and the premature determination of constitutional questions. *Martin* v. *Casey*, 360 U.S. 219.

This is not an exceptional case where the statute is justifiably attacked on its face as abridging fundamental rights. *Dombrowsky* v. *Pfister*, 380 U.S. 479, or where there is no uncertainty that it applies to appellants activities, *Baggett* v. *Bullitt*, 377 U.S. 360. Since the restraining order is still in effect, there is no delay inherent in referring the ques-

tions to the local courts. *Harman* v. *Fornessius*, 380 U.S. 528.

Appellants place great emphasis on the fact that the court invoked abstention on its own. This is not exactly correct. After the hearing held on April 27, 1966 the appellees filed a Memorandum On Courts Suggestion to Remit Issues to Commonwealth's Court suggesting that if the court determined that a submittal to the Commonwealth court would further the ends of justice, it could do so in the exercise of its sound discretion. [See Appendix]. In any case, whether the federal court should abstain or not, does not have to be raised by any of the parties. It is an attribute of the court, not of the parties, and the court, in the exercise of its sound discretion, may act accordingly. The appellants have not shown a clear abuse of discretion by the district court.

We respectfully submit therefore, that the appellants present no substantial question for the decision of this court and that the Opinion and Order of the District Court should be affirmed.

San Juan, Puerto Rico, January 24, 1967.

(s) J. B. Fernandez Badillo
J. B. Fernandez Badillo
Solicitor General of the
Commonwealth of Puerto Rico

(s) Peter Ortiz
Peter Ortiz
Assistant Solicitor General

Appendix

"In The United States District Court
For The District of Puerto Rico

Civil No. 395-65

The Wackenhut Corporation, et al.
PLAINTIFFS
v.
The Hon. Salvador T. Roig.,
Superintendent of Police, et al
DEFENDANTS

Memorandum On Court's Suggestion To Remit Issues To Commonwealth Court

To the Honorable Court:

The Attorney General for the Commonwealth of Puerto Rico has given careful consideration to the Court's inquiry about the Commonwealth's desire to secure clarification and interpretation of Act Number 108 in the local courts, and alleges:

1. That he is bound by the presumption of constitutionality of existing statutes and, therefore, is unable to file a petition for declaratory decree in the local courts seeking a determination of the validity of the Act.

2. That he considers that the Plaintiffs would be the proper parties to seek a declaratory decree as to the scope of the Act, as relates to the meaning of certain parts of the Act, if they feel that the wording of the Act creates uncertainty as to their rights.

3. It is respectfully suggested that, if this Honorable Court determines that a submittal to the Commonwealth Courts would further the ends of justice, this Honorable

Courts, in the exercise of its discretion can order the Plaintiffs to institute a proper action remitting to the Commonwealth Courts all relevant issues as to the scope of the Act, so that an authoritative construction of the Act may be obtained from the Supreme Court of Puerto Rico. San Juan, Puerto Rico, this 6 day of May, 1966.

Respectfully submitted,

RAFAEL HERNANDEZ COLON, *Attorney General for the Commonwealth of Puerto Rico, and* RAFAEL A. RIVERA CRUZ, *Attorneys for the Defendants*

By: RAFAEL A. RIVERA CRUZ

I Hereby Certify that on this date I mailed a copy of the above Memorandum on Court's Suggestion to Remit Issues to Commonwealth Court to the Attorneys for the Plaintiffs.

RAFAEL A. RIVERA CRUZ"

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In the
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OCTOBER TERM, 1966

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THE WACKENHUT CORPORATION, ET AL.,
appellants,

v.

THE HON. SALVADOR RODRIGUEZ APONTE,
ET AL.,
appellees.

BRIEF IN OPPOSITION TO MOTION TO AFFIRM

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In the

Supreme Court of the United States

OCTOBER TERM, 1966

No. 726.

THE WACKENHUT CORPORATION, ET AL.,
appellants,

v.

THE HON. SALVADOR RODRIGUEZ APONTE,
ET AL.,
appellees.

BRIEF IN OPPOSITION TO MOTION TO AFFIRM

Statement

As stated in Appellees' motion to affirm, this is a direct appeal from an Opinion and Order of a district court of three judges convened pursuant to 28 U.S.C. Section 2284 staying proceedings before the United States District Court pending commencement by Appellants of a suit in the Courts of the Commonwealth of Puerto Rico. The text of that Opinion and Order is set forth at pages 11a-18a of the Appendix to the Jurisdictional Statement (hereafter "JS").

However, the Order now appealed was preceded by a trial on the merits to which Appellees had stipulated and agreed (JS, App. p. 19a) after having requested and obtained leave of the District Court to withdraw their pretrial motion dated October 19, 1965, in which they had sought a stay of proceedings (JS, p. 6). Following the trial, the District Court suggested to Appellees that the action might be stayed and remitted to the Commonwealth courts. Once again Appellees elected to remain in federal court (Appendix, Appellees' Motion to Affirm, pp. 4-5).

As noted in the Jurisdictional Statement (pp. 2-3), Appellants are wearing two hats in this action - their own as "Safety Agencies" or "agencies" defined in the law and regulations attacked (JS, App. 2a-3a, 9a) and that of their employees. As agencies, both corporate appellants complained that Section 20 of the law violates their constitutional rights by forbidding them, as agencies, from rendering security and plant protection services during the course of labor disputes (JS, App., pp. 3a, 9a). Appellant Marvil International Security Services, Inc., further complained of the absolute prohibition against the use, by an agency, of trained dogs in rendering security services contained in Section 19 of the Law and the Regulations (JS, App., pp. 3a, 9a). Finally, on behalf of themselves and their watchmen employees Appellants complained of the arbitrary grouping of watchmen with private detectives for certain regulatory purposes (JS, App., pp. 14a-15a).

Appellees' motion to affirm is grounded on Rule 16 of this Court which reads in pertinent part:

> "1 Within thirty days after receipt of the jurisdictional statement, the appellee may file a printed motion to dismiss, or motion to affirm. * * * * *
>
> * * * *
>
> (c) The court will receive a motion to affirm the

judgment sought to be reviewed on appeal from a federal court on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument."

Argument

In summary, Appellants argue that the Motion to Affirm is ill-grounded under the quoted Rule 16 because it is definitely not manifest that the questions presented are unsubstantial.

Upon analysis, it is believed that the so-called doctrine of abstention inaugurated by Railroad Commission v. Pullman Co., 312 U.S. 496 (1941) is based on three considerations: (1) the desirability of comity between nation and state inherent in the concept of federalism; (2) the maxim that equity will not work a cure worse than the disease by enjoining broad state socio-economic regulatory schemes, especially in their formative stages; and (3) the reluctance of the federal courts to do something useless by rendering what might become a mere advisory opinion respecting the proper construction of an ambiguous state law. Balanced against these considerations is the right of litigants to expeditious decision and the constitutional duty of federal courts to decide. Appellants do not disagree with the doctrine. They disagree with its application to this case. It is submitted that its application herein violates the very reasons advanced for the existence of the doctrine.

Federal-state comity is surely satisfied by the voluntary acceptance of the federal forum by the state officials charged with that decision, especially where, as here, they moved for abstention, then obtained leave of court to withdraw that motion, then stipulated to trial, went to trial, and finally answered in the negative "the Court's inquiry about the

Commonwealth's desire to secure clarification and interpretation of Act Number 108 in the local courts." (Appellees' Motion, p. 4.) Appellees state that it is "not exactly correct" that the lower court invoked abstention of its own motion (Motion, p.3). That is precisely what the lower court did. The parties to the litigation did not invoke it. On the contrary, both rejected it. That leaves the court, In Hostetter v. Idlewild Bon Voyage Liquor Corp., 377 U.S. 324, 329 (1964), this Court held:

> "Unlike many cases in which abstention has been held appropriate, there was here no danger that a federal decision would work a disruption of an entire legislative scheme of regulation. We therefore accept the District Court's decision that abstention was unwarranted here, where neither party requested it and where the litigation had already been long delayed, despite the plaintiff's efforts to expedite the proceedings."

There is no danger here of working inequity by unnecessary impairment of state functions. It is readily apparent that Appellants do not challenge all of the law. Unchallenged is the regulation of private detective agencies or private detectives of the sleuth category. The ambit of Appellants' attack below is restricted and narrow, having no effect upon the licensing or other regulatory devices enacted. The attack below was confined to two provisions of a prohibitory nature, and certain aspects of the qualification requirements imposed upon watchmen employed by agencies, as distinguished from watchmen not so employed. Clearly, this is not a challenge to broad regulatory legislation, and therefore, there was no justification for abstention on this basis. Hostetter v. Idlewild Bon Voyage Liquor Corp., supra.

Finally, no basis for abstention can be found in the policy of avoiding constitutional questions which are dependent upon some subsidiary issue of state law, resolution of which by the state courts might moot the constitutional question. As noted, Appellants challenge the two absolute prohibitions forbidding agencies from rendering watchman services in the course of labor disputes and from using trained dogs in connection with watchmen. The application of these provisions to Appellants is immediate and clear, and therefore no special circumstances exist which would authorize the invocation of the extraordinary doctrine of abstention. Baggett v. Bullitt, 377 U.S. 360, 375-379 (1964). Both these statutory provisions and the arbitrary grouping of watchmen employed by agencies with private detectives are plain and unambiguous in all material respects, so that abstention is unjustified. Davis v. Mann, 377 U.S. 678, 690-691 (1964); City of Chicago v. Atchison, T. & S. F. Ry. Co., 357 U.S. 77, 84 (1958). That the lower court believed the statute clearly applicable to Appellants is explicit in the Opinion and Order presently on appeal (JS, App. pp. 12a, 16a), and is implicit in the temporary restraining order left extant by the lower court, upon which Appellees so strongly rely in their Motion to Affirm (p. 2). Although the pleadings in the action below are not yet before this Court, they will show that Appellees themselves believed in the law applicable to Appellants, and admitted its application. Nor is there any basis for abstention to be found in the possibility that the provisions in question might be held violative of the constitution of Puerto Rico. Harman v. Forssenius, 380 U.S. 528, 536 (1965).

For these reasons, it is submitted that none of the factors forming the raison d'etre of the abstention doctrine exists in this case, and as a consequence, it is clearly an improper case for abstention.

Conclusion

Appellants request that the Appellees' Motion to Affirm be denied, and that the Court proceed to consider whether probable jurisdiction should be noted, for the reason that the Motion to Affirm does not make the showing required by Rule 16 that "it is manifest that the questions * * * are so unsubstantial as not to need further argument." On the contrary, the questions presented are so manifestly substantial as to require the noting of probable jurisdiction.

San Juan, Puerto Rico, February 15, 1967.

(s) WILLIAM B. GRAVES
William B. Graves

(s) DONALD M. HALL
Donald M. Hall

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966.

THE WACKENHUT CORPORATION ET AL. *v.* APONTE ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO.

No. 726. Decided March 13, 1967.

PER CURIAM.

The motion to affirm is granted and the judgment is affirmed.